IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 256 of 2001

DR. OM PARKASH SHARMA
V/S
STATE & ORS

Mr. DC SHARMA, for the appellant / petitioner

Mr. HR SONI, A.G.A., for the respondent

Date of Order : 12.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

Aggrieved by the judgment dt. 19.1.2001, this appeal has been preferred by the appellant.

Facts giving rise to the present matter are that the petitioner was removed from service vide order dt. 11.7.1997 Annexure-17. He preferred writ petition challenging the order of removal mainly on the ground that as per the direction of the High Court in the earlier writ petition, respondents failed to initiate fresh enquiry after giving full opportunity of hearing to the petitioner. It was contended that the disciplinary authority appointed enquiry officer who had supplied a copy of the preliminary enquiry report but thereafter statement of witnesses were not recorded so as to provide an opportunity of cross examination to those witnesses, and therefore, right of the

petitioner was prejudiced on account of non production of witnesses after supply of copy of the preliminary enquiry report. It was also stated that the punishment awarded to the petitioner was wholly disproportionate looking to the charges levelled against the petitioner.

A detailed reply to the writ petition was given by the respondents stating that as per the directions of the High Court, the enquiry was completed, and its only after serving a copy of the enquiry report, and calling for a representation, order of removal from service Annexure-17 was passed. It was further stated that looking to the charges levelled against the petitioner, the order of removal was proportionate, and therefore, the order at Annexure-17 was prayed to be maintained.

The learned Single Judge dismissed the writ petition taking note of the fact that as per the directions of the Court in the earlier writ petition copy of the enquiry report was supplied to the petitioner along with show cause notice, therefore, there was no jurisdictional error in coming to the conclusion of guilt, and this Court cannot sit as an appellate Court, hence the writ petition was dismissed.

Challenging the said judgment, the appellant has raised not only two grounds already discussed but a further

ground that disciplinary authority had recorded its disagreement in regard to charge no. 3 and 4, inasmuch as, charge no. 3 was found partially proved whereas charge no.4 was not found to be proved by the enquiry officer, while contrary to the finding of the enquiry officer, a finding was recorded holding both the charges as proved without giving a show cause notice for disagreement. The said ground was not raised in the writ petition, and is raised for the first time in appeal with a plea that this being a legal ground can be raised at the appellate stage also. Learned counsel for the appellant further urged that the enquiry was conducted contrary to the directions issued by the learned Single Judge in the Writ Petition No. 697/1981 decided on 5.3.1992, hence it was prayed that looking to the directions given in the said judgment, the order of removal should not be allowed to stand.

We have considered the submissions of the learned counsel for the appellant, and perused the record.

Perusal of the record shows, that the issues which have been raised in the writ petition, and appeal were not raised by the petitioner while submitting the representation at Annexure-15 on the receipt of the enquiry report. In fact the petitioner should have raised the issues on the first occasion. It was not stated therein that the petitioner was not provided opportunity of cross

examination of the witnesses on the receipt of the preliminary enquiry report as per the directions of the Court. None of the grounds urged here were raised in the representation at Annexure-15. Thus, the petitioner allowed the disciplinary authority to proceed only on the issues which were raised in the representation. A perusal of the representation shows that issues raised therein pertains to factual part of finding, and those issues were well considered by the disciplinary authority in his order. The issue regarding disagreement of the disciplinary authority in regard to the finding recorded by the enquiry officer on charges no. 3 and 4. Firstly, it is seen that while filing the writ petition, petitioner has not raised this issue, and thus there was no occasion for the learned Single Judge to decide the same. Hence, on that count it cannot be said that the judgment of the learned Single Judge suffers from any error.

Apart from the fact that if the petitioner failed to raise a specific issue in the writ petition then at appellate stage such issue cannot be allowed to be raised for the first time because we are judging the legality and propriety of the judgment of the learned Single Judge in this appeal. It is further a fact that if at all the petitioner was having the said ground, it was necessary for him to file an appeal so as to raise such issue before the appellate authority for immediate redressal of his

grievance. During the course of arguments learned counsel for the appellant was asked as to why the order of removal was not appealed as per the C.C.A. Rules. It was submitted that it being an order passed by the Government, thus appeal against such order is not maintainable. However, the arguments raised in this regard are not sustainable in view of the legal provisions under the C.C.A. Rules because an appeal lies against the order passed by the Dy. Secretary, or even the Secretary of the Government. Hence in the circumstances, even the writ petition was not maintainable as the petitioner was having remedy under the provisions of C.C.A. Rules. Now at the stage when long period has already passed, new ground in the appeal cannot be allowed to be raised more so when no reason has been as to why the said ground was not raised in the writ petition, or as to why the appeal was not filed as provided under the C.C.A. Rules.

Looking to the discussion made above, it cannot be said that the judgment passed by the learned Single Judge suffers from any illegality more specific looking to the representation at Annexure-15 and 17 it cannot be said that factual issues regarding guilt so recorded by the disciplinary authority suffers from any perversity. Thus, we do not find any illegality in the order under challenge.

Hence, the appeal preferred by the appellant

deserves to be dismissed, and is accordingly dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/